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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Petition for Rulemaking  
to Amend 47 C.F.R. § 76.1003 --  
Procedures for Adjudicating  
Program Access Complaints

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RM Docket No. 9097

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**COMMENTS OF DIRECTV, INC.**

DIRECTV, Inc. ("DIRECTV")<sup>1</sup> respectfully submits the following comments in connection with the above-captioned petition for rulemaking ("Petition").

Ameritech New Media, Inc. ("Ameritech") has requested that the FCC revise and expand certain aspects of the Commission's rules relating to program access complaints brought under Section 628 of the Communications Act.<sup>2</sup> Specifically, Ameritech has proposed that the Commission (1) impose a short deadline for resolution of Section 628 program access complaints; (2) grant a right of discovery to complainants invoking Section 628; and (3) create economic penalties, in the form of fines or damages, to discourage the violation of Section 628.

Since their adoption in the spring of 1993, the program access rules have been a powerful and relatively successful tool for addressing and curbing the market power of incumbent cable monopolists. While DIRECTV has chosen not to avail itself of the program access procedures and remedies available at the FCC, DIRECTV has experienced first-hand the anticompetitive practices of cable interests and vertically-integrated cable programmers that led

<sup>1</sup> DIRECTV is a wholly-owned subsidiary of DIRECTV Enterprises, Inc., a licensee in the DBS service and majority-owned subsidiary of HE Holdings, Inc., a Delaware corporation.

<sup>2</sup> See 47 C.F.R. § 76.1003.

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to the passage of the access to programming provisions of Section 628, and believes that Section 628, combined with the FCC's implementing rules, have had a significant effect in getting DIRECTV and others to the negotiating table in order to obtain many important program offerings. Nevertheless, DIRECTV also agrees with Ameritech that multichannel video programming distributors ("MVPDs") continue to experience difficulties in obtaining access to certain programming, such as sports programming, that is indispensable to their ability to compete against cable operators.<sup>3</sup> Furthermore, because of the possibility of delay and the absence of any deterrent against obstructionist behavior, it is likely that DIRECTV and others have compromised at the negotiating table rather than face the protracted uncertainties inherent in pursuing program access remedies. As a result, the playing field may not yet have been leveled to the extent intended by Congress in enacting this important provision of the 1992 Cable Act.

DIRECTV therefore supports the targeted rule adjustments suggested in the Petition. Although the Commission has been nominally committed to the rapid resolution of program access complaints,<sup>4</sup> the average time for resolving a complaint has been over one year,<sup>5</sup> and DIRECTV agrees that measures to expedite the resolution of such complaints will result in the more rapid introduction of competition in the MVPD marketplace.<sup>6</sup> Furthermore, DIRECTV

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<sup>3</sup> Petition at 5; *see, e.g., Bell Atlantic Video v. Rainbow Programming Holdings, Inc.*, CSR-4983-P (Mar. 28, 1997) (pending); Reply Comments of Tele-TV, CS Docket No. 96-133 (Aug. 19, 1996), at 16-18.

<sup>4</sup> *See* Assessment of the Status of Competition in the Market for the Delivery of Video Programming, 5 Comm. Reg. (P&F) 1164 (1997) ("1996 Competition Report"), at ¶ 159.

<sup>5</sup> Petition at 12-13.

<sup>6</sup> *See id.* at 10-17.

agrees that permitting MVPD complainants a right to discovery,<sup>7</sup> and providing for penalties or damage awards in the event that violations are proven,<sup>8</sup> are revisions to the rules that will allow for more meaningful and vigorous enforcement in the manner that Congress intended in passing Section 628.

More generally, DIRECTV would support a Commission proceeding to fine-tune the program access rules in the event that the Commission elected to do so. The Petition suggests certain aspects of the program access rules that warrant further refinement and expansion, and there may be others as well. For example, last year the Commission acknowledged that, as fiber-optic wiring becomes cheaper and easier to deploy and use, “delivery of programming by terrestrial means instead of via satellite may permit cable operators to abuse vertical relationships between themselves and programmers.”<sup>9</sup> Although the Commission recognized the possibility that terrestrial delivery could be deployed “for the purpose of evading” the program access rules,<sup>10</sup> it did not have actual evidence that such conduct was occurring. In the event that the Commission considers revisions to the program access rules, it may be appropriate for the Commission to consider again -- and to build a record on -- whether the protections of the program access rules should be extended to cover terrestrially-delivered programming that technically may not fall within the definitions of “satellite cable

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<sup>7</sup> *Id.* at 17-19.

<sup>8</sup> *Id.* at 19-24.

<sup>9</sup> 1996 Competition Report at ¶ 153.

<sup>10</sup> *Id.* at ¶ 154.

programming” or “satellite broadcast programming” in Section 628 of the Communications Act.<sup>11</sup>

The Commission also could examine whether and under what circumstances the rules should be extended to encompass acts or practices by non-vertically integrated programmers whose purpose or effect is to deny multichannel video programming distributors the fundamental access to programming they need in order to provide viable competition to cable incumbents. Once again, the Commission recognized last year that denial of access to programming from non-vertically integrated programmers “may inhibit competition in markets for the distribution of video programming.”<sup>12</sup> Given that media ownership and programming concentration concerns have been exacerbated recently by announcements of intended merger transactions,<sup>13</sup> it may be appropriate for the Commission to examine and expand the scope of the program access rules to encompass non-vertically integrated programmers.

For these reasons, DIRECTV supports the Petition, and also supports a proceeding to explore whether other adjustments to the program access rules should be made.

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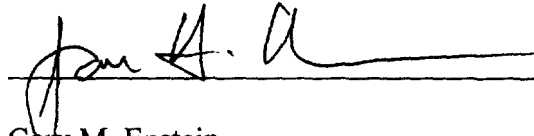
<sup>11</sup> 47 U.S.C. § 548(i).

<sup>12</sup> 1996 Competition Report at ¶ 157.

<sup>13</sup> See, e.g., “Murdoch Will Buy Cable Empire From Robertson for \$1.9 Billion,” The N.Y. Times, June 12, 1997, at A1, D4; “Telecommunications Deals Set Off Antitrust Alarms: Some Say AT&T, News Corp. Plans Go Too Far,” The Washington Post, May 29, 1997, at E1; “Murdoch Gets Primestar Stake in Pact With His Cable Rivals,” The N.Y. Times, May 28, 1997, at C5; “Murdoch Becomes Cable Guy With Primestar Deal,” USA Today, May 27, 1997, at 1B.

Dated: July 2, 1997

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary M. Epstein", is written over a horizontal line.

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